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ABSTRACT

The paper presents tables, charts, and narrative containing statistical data on special education hearings in Pennsylvania. Sections address the following: 1980 hearings by exceptionality, 1972-1981 hearings by exceptionality, issues covered at hearings, hearings concerning the extended school year program, occupations of hearing officers, hearing officer rulings, appeal opinions issued by the Secretary of Education, special education appeal opinions for the period 1972-1981, locations of hearings, legal and advocacy representation, independent evaluation, and attendance at hearings. (SB)

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SPECIAL EDUCATION DUE PROCESS HEARINGS IN PENNSYLVANIA

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April 16, 1981
Council for Exceptional Children
International Convention

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Pennsylvania Department of Education

EC133366

Introduction

Special Education Due Process Hearings have been required in Pennsylvania since 1972 due to the PARC Consent Agreement (343 F.Supp. 279 (1972)). At that time the right only applied to the mentally retarded or those thought to be mentally retarded. Issues at these hearings were whether the student was mentally retarded and/or whether the recommended program or change in program was appropriate.

In 1975 the State Board of Education of Pennsylvania extended the Right to Education and Due Process Procedures to all other handicapped school-aged persons (22 Pa. Code Section 13.1 et seq.), and to the gifted and talented in 1976. (22 Pa. Code Section 13.21 et seq.)

Public Law 94-142 and its accompanying Regulations served to further refine the issues and the parameters of the special education hearings.

Armstrong v. Kline and Battle v. Commonwealth have added further issues to special education hearings. Hearing Officers may now determine whether a student is eligible for extended school year programming and if so, whether that program is appropriate.

Following is an overview of the special education hearings in Pennsylvania. Highlighted are hearings in 1980 including those concerning Extended School Year.

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Special Education "Due Process" Hearings in 1980 Listed by Exceptionality*

Mentally Retarded (MR)	26	39%
Gifted & Talented (G/T)	6	9%
Learning Disabled (LD/BI)	16	24%
Socially & Emotionally Disturbed (SED)	8	12%
Hearing Impaired (HI)	4	6%
Physically Handicapped (PH)	1	2%
Visually Impaired (VI)	1	2%
Preevaluation Hearing (Pre Eval.)	4	6%
Total Hearings 1980	66	

*Exceptionalities defined by Pennsylvania Standards for Special Education Programs (22 Pa.Code Chapter 341)

Note: Six of the total concerned students with severe multihandicaps.
Five of the total concerned Extended School Year.

For reporting purposes the hearings have been classified according to the student's exceptionality. When the student had more than one handicap it is listed under the primary handicap.

On the following page is a breakdown of special education due process hearings by exceptionality for 1972 thru 1981.

PENNSYLVANIA SPECIAL EDUCATION DUE PROCESS HEARINGS

June 1972 to April 1, 1981

ear*	MR	G/T	LD/BI	SED	HI	PH	VI	Pre-Eval.	ESY	TOTA
972	36	0	0	0	0	0	0	0	0	36
973	57	0	3	1	0	0	0	0	0	61
974	41	0	2	1	0	0	0	0	0	44
975	40	0	8	1	0	0	0	0	0	49
976	32	3	14	7	3	1	0	0	0	60
977	36	8	25	9	8	2	2	0	0	90
978	23	6	24	10	10	5	1	1	0	80
979	16	5	11	5	4	3	0	4	0	48
980	26	6	16	8	4	1	1	4	5	66
981	7	0	5	5	1	1	0	2	0	21
OTAL	314	28	108	47	30	13	4	11	5	555

*Hearings listed by year decision received by Bureau of Special Education

Issues at Special Education Due Process Hearings 1980

Extended School Year Program (Armstrong Standard applied)	5	8%
Classification	18	27%
Approved Private School	13	20%
Parent request for Least Restrictive Environment	4	6%
Parent request for More Restrictive Environment	9	13%
Program	12	18%
Related Services	5	8%
Class Size	1	2%
Age Range of Class	1	2%
Residential Placement	2	3%
Specific Building	3	5%
Transportation	2	3%
Distance	3	5%
Dual Enrollment	1	2%
Out of State	1	2%

Note: Some hearings had more than 1 issue

Hearings Concerning Extended School Year

Five hearings were conducted in 1980 concerning the Extended School Year Requirement using the Armstrong Standard. In four of the five cases, 80%, the issue was eligibility of the student for an Extended School Year program, whether the student qualified under the Armstrong standard. In one of the cases, 20%, the issue was the appropriateness of the program including the amount of time in the home and in school.

Four of the hearings were held and decisions received in time to implement the decision during the summer. In one case the hearing was held and a decision requested for the summer of 1981, no final decision has been reached in this case.

Four hearing decisions were rendered in 1980 re: Armstrong. 3 supported the school district recommendation that the student did not meet the Armstrong standard. One determined a different type of Extended School Year program was appropriate and recommended a combination center based and home based program.

In three of the cases the students were mentally retarded, in one learning disabled and in one emotionally disturbed.

Occupations of Hearing Officers

Hearing Officers are used on a consultant basis to the Department of Education. All are employed in some capacity in the education or evaluation of the exceptional. Following are the occupations of the hearing officers in each of the cases resulting in decisions in 1980:

College Professor	14	21%
University Professor	15	23%
School Psychologist	9	14%
School District Administrator	14	21%
Intermediate Unit Administrator	10	15%
Clinical Psychologist	3	5%
Private School Administrator	1	2%
Total Cases	66	

Of the 53 trained hearing officers each does not handle the same number of cases. This distribution is due in part to request of the hearing officer, geographical distribution of hearings, exceptionality of the student in the specific case, and preference of the Bureau of Special Education. Of the 53 trained hearing officers, 17 handled 1 case each, 10 handled 2 cases each, 7 handled 3 cases each and 2 handled 4 cases each.

Hearing Officer Rulings

Support school district recommendation	33	50%
Support school district with modifications	13	19%
Support parent	7	11%
Own decision	8	12%
Agreement	5	7%
Total Cases	66	

This data shows that in 50 percent of the hearings the ruling supported the school district and upheld its specific recommendation. In 19 percent of the cases the decision supported the district with specific modifications such as changes in the IEP, further evaluation, additional related services, amendment to the district and intermediate unit plans, or specifications for transportation. In 11 percent of the cases the evidence presented was sufficient to warrant a ruling to support the parent's contention. In 12 percent of the cases the hearing officer ruled in favor of neither party, but instead, made a decision for a program/placement different than that recommended by the parent or school. The parties were able to reach an agreement as to evaluation/program/placement in 7 percent of the cases.

Appeal Opinions issued by the Secretary of Education

Secretary's Ruling:		
Uphold Hearing Officer	16	61%
Remand Case to Hearing Officer	3	11%
Overturn Hearing Officer Decision	3	11%
Cases Pending Decision	4	15%
Total Hearing Officer Decisions Appealed to Secretary of Education	26	39%
Exparte Order	1	
Petitions for Reconsideration	2	

39 percent of the cases were appealed to the Secretary. In the majority of cases the decision of the hearing officer was upheld (61 percent of the 26 cases appealed). The rate of appeals may be related to the willingness of parties to exhaust every administrative remedy in order to win the case. The fact that the hearing officers were upheld in 61 percent of the total cases appealed, (71 percent of the appeal opinions rendered) speaks highly for their training and the quality of their effort. 11 percent of the cases were remanded to the hearing officer. This resulted in decisions in two of the cases, one of the cases is still pending.

Hearing Officer decisions are considered final unless appealed by either party, or unless altered by an Ex Parte Order issued by the Secretary of Education. In cases whether the decision of the hearing officer does not conform to law and regulation the Secretary will issue an Order modifying the decision. One Ex Parte Order was issued in 1980. A total of three such Orders have been issued since 1978.

The parties may file a Petition for Reconsideration within 15 days of the Secretary of Education's Appeal Decision. Two such Petitions were filed and answered in 1980.

The parties may appeal an Opinion of the Secretary of Education to Commonwealth Court (for the handicapped and the gifted and talented) and to Federal Court for the handicapped.

On the following page is a listing of Special Education Appeals to the Secretary of Education from 1972 thru 1981.

Legal and Advocacy Representation

Following is a listing of the representation of parents and school districts by legal counsel on an advocate:

School represented by Attorney:	52	79%
Parent represented by Attorney:	31	47%
Parent represented by Advocate:	10	15%

The school district was supported by the hearing officer in 35 of the cases in which it was represented by legal counsel. The hearing officer ruled against the district in 7 of the cases in which the district used an attorney.

The hearing officer supported the parent in 7 of the cases in which the parent had legal counsel, and ruled against the parent in 16 of the cases in which the parent had legal counsel.

Attendance at Hearings

A parent may request a special education due process hearing and choose not to attend. In some cases, the school district may request a hearing and the parent may choose not to attend. In six of the cases,

PENNSYLVANIA SPECIAL EDUCATION APPEALS

June 1972 to April 1, 1981

*	MR	G/T	LD/BI	SED	HI	PH	VI	TOTAL	% of Heari Appealed
-75	30	0	6	0	0	0	0	36	19
	9	2	9	3	3	0	0	26	43
	12	2	10	4	4	0	2	34	38
	9	1	11	2	4	2	1	30	39
	2	2	7	2	2	3	0	18	38
	12	4	5	1	3	1	0	26	39
	4	0	0	1	0	0	0	5	29
L	78	11	48	13	16	6	3	175	32

eals listed by year hearing officer decision was received.
addition six orders have been issued in response to Petitions for Reconsideration.
ee Ex Parte Orders have been issued.

9% the parent did not attend. Once the hearing officer determines that appropriate contact was made concerning the date, the hearing may proceed without the parent in attendance.

Independent Evaluation

The parent may introduce a report from a private evaluator and may request that the evaluator attend the hearing as an expert witness. In 38 of the cases, 58% the parent introduced an outside evaluation.

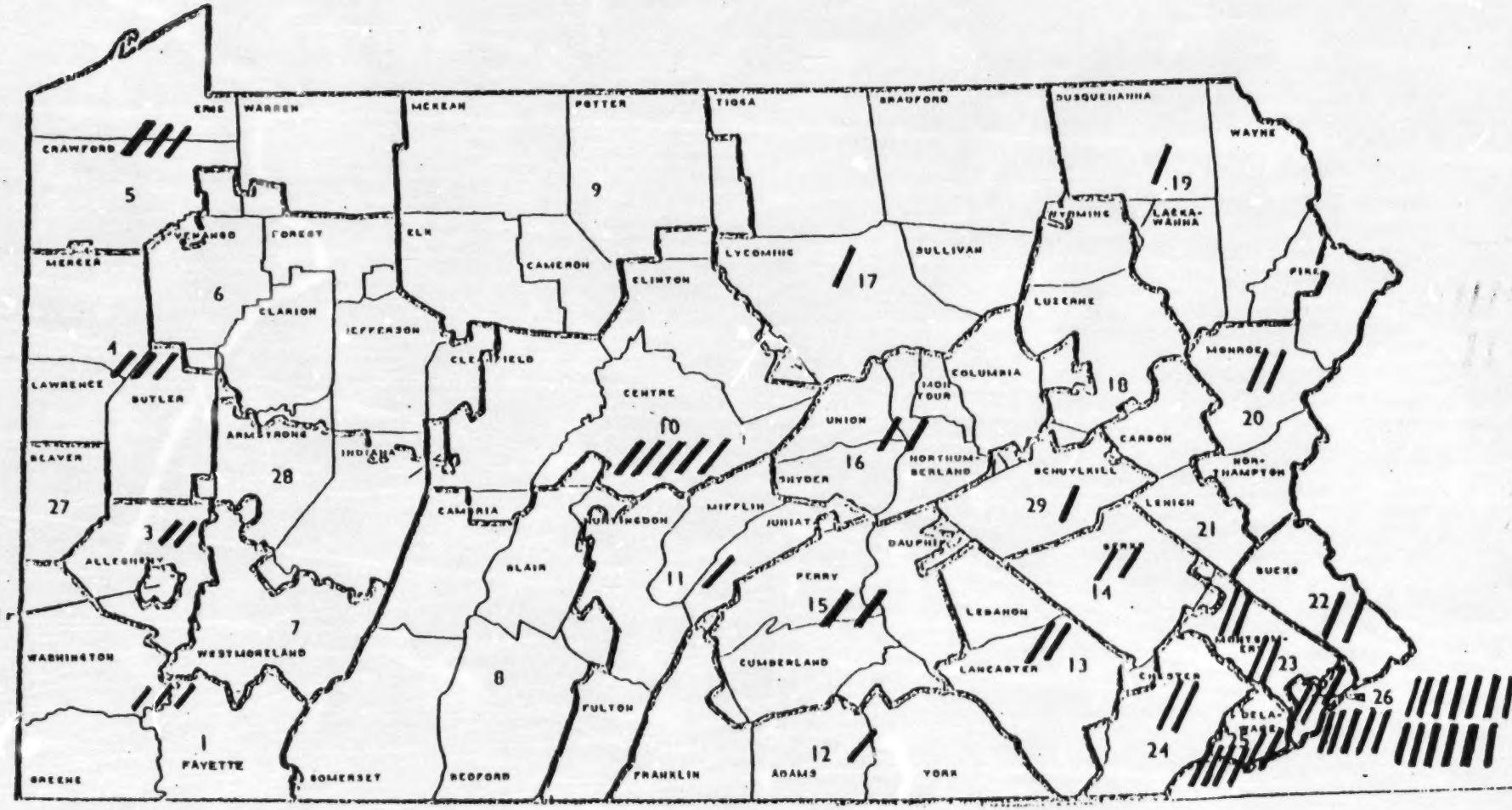
Locations of Hearings

Of the total 66 hearings, 38 districts each had one hearing, 2 districts each had 2 hearings, and 1 district had 3. There were 21 held in the School District of Philadelphia.

Following is a listing of intermediate units and the number of hearings in each (those intermediate units not listed had no hearings).

IU	IU	IU	IU
1 - 3	12 - 1	19 - 1	26 - 21
3 - 2	13 - 2	20 - 2	29 - 1
4 - 3	14 - 2	22 - 2	
5 - 3	15 - 2	23 - 4	
10 - 5	16 - 2	24 - 2	
11 - 1	17 - 1	25 - 6	

On the following page is an illustration of the locations and frequency of special education hearings.


ERIE
WARREN
MCKEAN
POTTER
TIOGA
BRADFORD
SUSQUEHANNA
WAYNE
CRAWFORD
5
9
19
MERCER
VENANGO
FOREST
ELK
CAMERON
LYCOMING
SULLIVAN
WYOMING
LACKA-
WANNA
PIKE
6
CLINTON
17
LUZERNE
CLARION
JEFFERSON
1
CLEARFIELD
MONROE
LAWRENCE
BUTLER
CENTRE
COLUMBIA
MONTOUR
18
20
UNION
ARMSTRONG
CARBON
BEAVER
INDIANA
10
SNYDER
16
NORTHUM-
BERLAND
SCHUYLKILL
NOR-
THAMPTON
28
27
CAMBRIA
MIFFLIN
JUNIATA
29
LEHIGH
3
HUNTINGDON
DAUPHIN
21
ALLEGHENY
BLAIR
11
PERRY
14
BUCKS
2
15
LEBANON
22
7
WASHINGTON
WESTMORELAND
CUMBERLAND
LANCASTER
13
MONTGOM-
ERY
23
8
FULTON
CHESTER
26
1
DELA-
WARE
FAYETTE
12
24
GREENE
SOMERSET
BEDFORD
FRANKLIN
ADAMS
YORK